

UNITED STATES DISTRICT COURT

for the

District of Montana

Butte Division

) Case No.

CV-22-32-BU-BMM-JTJ

(to be filled in by the Clerk's Office)

Lee L. Lopez

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Mark Johnson; Ed Lester;
BSB Detention Center Staff;
County of Silver Bow

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

MAY 25 2022

)
Clerk, U.S. Courts
District of Montana
Missoula Division

AMENDED COMPLAINT FOR VIOLATION OF CIVIL RIGHTS (Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Lee L. Lopez

All other names by which
you have been known:

ID Number

3020943

Current Institution

Butte Silver Bow Detention Center count jail

Address

155 W. Quartz St.

Butte

City

mt.

59701

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

Mark Johnson

Job or Title (*if known*)

Administrator Officer / Captain

Shield Number

Employer

BSB Detention Center count Jail

Address

155 W. Quartz St.

Butte

City

mt.

59701

Zip Code

 Individual capacity Official capacity

Defendant No. 2

Name

Ed Lester

Job or Title (*if known*)

Sheriff

Shield Number

Employer

City of Butte

Address

225 N. Alaska St.

Butte

City

mt.

59701

Zip Code

 Individual capacity Official capacity

Not conducting weekly or at least bi-weekly inspections back in the pods at the BSB Detention Center. Mark Johnson Does not help improve the safety, sanitary, humane living conditions for the inmates like Mr. Lopez. Mr. Lopez was placed in a two man cell/room as a third person directly on the floor without a 12" sleeping platform. Leaving Mr. Lopez subjected to being stepped on, kicked, intimidated, hollared at, because other inmates in the cell/room had a hard time getting out of around Mr. Lopez. Putting Mr. Lopez in a two man cell/room as a third person to take up much needed space for the two inmates in the two man cell/room creating overcrowding of the BSB Detention Center. Thus violating Mr. Lopez 8th and 14th Amendments of the U.S. Constitution.

Ed Lester is the Sheriff of the BSB Detention Center. Ed Lester lack of over sight of his employee Mark Johnson led to the overcrowding, unsafe, inhumane living conditions of inmates like Mr. Lopez. Mr. Lopez was placed on the floor as a third person in a two man cell/room without a 12" sleeping platform, and taking up much needed for the two people in the two man cell/room. Leaving Mr. Lopez subjected to being intimidated, kicked, stepped on because of inmates try to leave the cell. Thus violating Mr. Lopez 8th and 14th Amendments of the U.S. Constitution.

BSB Detention center staff knowingly and purposely purposely put inmate like Mr. Lopez directly on the floor of a two man cell/room as a third person resulting of the overcrowding of the BSB Detention Center, without a sleeping platform 12" off of the floor. Leaving inmates like Mr. Lopez subjected to taken up much needed space for the two people in the two man cell/room. Per detention Standards Policies and Procedures: 25' ft. of un-encumbered space per inmate in a cell/room, Mr. Lopez was subjected to being stepped on, kicked, hollared at and cussed out due to inmates frustration of Mr. Lopez being in the way of the other inmates route to get out of the cell. Thus violating his 8th and 14th Amendments of the U.S. Constitution.

BSB Detention Center is part of the Municipal Corporation that is ran by the County of Silver of Silver Bow. Lack of oversight put Mr. Lopez directly on the floor with out a 12" inch sleeping platform in a two man cell/room, creating overcrowding of The BSB Detention Center. Making Mr. Lopez a third man in a two man cell/room taking up much needed space for two inmates. The Detention Standards Policies and Procedures state: 25 sq. ft. per inmate. Leaves Mr. Lopez subjected to the inhumane living conditions of being kicked, stepped on, hollared at, cussed out because inmates frustration that live in the cell/room trying to get out of the cell/room or back in, Thus violating Mr. Lopez 8th and 14th Amendments of the U.S. Constitution.

County of Silver Bow lack of oversight of the BSB Detention Center, Detention Standards Policies and procedures subjects inmates like Mr. Lopez to the inhumane living condition on Administrative Segregation. Administrative Segregated inmates like Mr. Lopez are supposed to have the same living conditions as general population. leaving inmates like Mr. Lopez to live in a cell/room without a sink or toilet for 20 days and again for another 13 days with no human contact and no recreation twice a day for inmates who are locked down for more than 10 hrs. a day. Per The Detention Standards Policies and Procedures. Thus Violating Mr. Lopez's 8th and 14th Amendments of the U.S. Constitution.

not conducting weekly or at least Bi-Weekly inspections back in the pods. Mark Johnson Does not help improve the safety, sanitary, humane living conditions for the inmates like Mr. Lopez while on Administrative Segregation. Mr. Lopez was placed in wait and holding (W/H) cell for (20) twenty days with no sink or toilet, he did not receive recreation twice a day for inmates locked down for more than 10 hrs. a day per Detention Standard policies and procedures. Thus Violating Mr. Lopez 8th and 14th Amendments. This happened more than once. Another time for (13) days.

Ed Lester lack of oversight on mark Johnson at the BSB Detention Center led to inmates like Mr. Lopez subjected to be placed in a cell/room called wait on holding (W/H) on Administrative Segregation. This cell/room has no toilet or sink in it. Mr. Lopez stayed in this cell/room for 20 day. Then another time for (13) days with no human contact, no recreation twice a day. Mr. Lopez living conditions did not meet the requirements of Detention Standards policies and procedures. On Administrative Segregation inmates are supposed to have the living conditions as general population. Subjecting Mr. Lopez leaving him to have auditory hallucinations, night mares, lack of sleep. Thus violating Mr. Lopez 8th and 14th Amendment of the U.S. Constitution.

while on Administrative Segregation in Wait and holdin (W/H) in booking. Mr. Lopez reported to Staff at the BSB Detention Center about the living conditions that are inhumane for inmates like Mr. Lopez. Per Detention Standards Policies and Procedures Mr. Lopez living conditions did not meet the requirements for Administrative Segregated inmates like Mr. Lopez to have the same living conditions as general population like a toilet and sink in the same cell/room. Recreation twice a day for Inmates like Mr. Lopez locked down for more than 10 hrs. a day. Thus violating Mr. Lopez 8th and 14th Amendment.

Mark Johnson lack of weekly or at least bi-weekly inspection at the BSB Detention Center to fix much needed issues like the lack of updated legal materials in the BSB Detention Center to help give resources and/or guidance to inmates like Mr. Lopez. Inmates, like Mr. Lopez do not know nearly enough about the law to help assist on their cases. Those that are indigent receive only one legal sized envelope with "Legal" written at the bottom left corner once a week with no blank paper to do legal work on. The law books are from a former Judge Brad Newman that are 2015, 2019, and some of those are missing. Also there are no Federal law books either to use. Thus violating Mr. Lopez 14th Amendment.

The County of Silver Bow that run the Municipal Corporation department of the BSB Detention Standard Center. The lack of oversight has made legal material outdated and limited to one white legal sized envelope with no blank paper to do legal work on, for inmates like Mr. Lopez. We are not allowed to go down to get legal material to pick out what the inmates, like Mr. Lopez needs. There is no one employed at the BSB Detention Center to help give guidance and/or the right resources to the inmates like Mr. Lopez. Thus violating mr. Lopez 14th Amendments.

The BSB Detention Center staff not following the Detention Standards Policies and Procedures, has created the issue of giving out outdated legal material to inmates like Mr. Lopez. The lack of receiving up to date legal material like law Books that go past 2015 and 2019 both state and federal. The inmates like Mr. Lopez are given one white legal envelope with no blank paper to do legal work on. Thus violating Mr. Lopez 14th Amendment.

Ed Lester is the sheriff of BSB Detention Center and his lack of oversight on his employees has created the issue of un-updated legal material. The inmates, like Mr. Lopez of the BSB Detention Center receive only one white legal size envelope with no blank paper (un-lined) to do legal work on.

The inmates like Mr. Lopez are not taken to get legal material to pick out what they need, and there is no staff here who knows enough to know what the inmates are asking for. Thus violating Mr. Lopez 14th Amendment.

constitution

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

see attachment II(D) : sleeping on floor and over crowding
: Ag-Seg
: Legal material

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

- Pretrial detainee
 Civilly committed detainee
 Immigration detainee
 Convicted and sentenced state prisoner
 Convicted and sentenced federal prisoner
 Other (*explain*) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. *Do not cite* any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

see attachment statement of claim (B)

Defendant No. 3

Name

Job or Title (*if known*)

Shield Number

Employer

Address

~~Dacey Williams
Sgt.~~~~City of Butte~~~~155 W. Quartz St.~~~~Butte~~~~Mt.~~~~59701~~

City

State

Zip Code

 Individual capacity Official capacity

Defendant No. 4

Name

~~Ann M. Shea~~~~County Attorney~~

Shield Number

~~County of Silver Bow~~~~155 W. Granite St.~~~~Butte~~~~Mt.~~~~59701~~

City

State

Zip Code

 Individual capacity Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

- A. Are you bringing suit against (*check all that apply*):

Federal officials (a *Bivens* claim)

State or local officials (a § 1983 claim)

- B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

Eighth and Fourteenth Amendments of the United States Constitution.

- C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

Statement of Claim (B)

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Since Dec. 16, 2021 through now. I have been requesting up to date Legal Material and have not received an updated Legal material here at the BSB Detention Center. All Legal material was and still are not updated. Thus creating unreasonable access to Legal material.

Upon arriving at the BSB Detention Center on Dec. 13, 2021 through Dec. 16, 2021, I was placed in a two man cell as a third person directly on the floor without a 12" inch sleeping platform to sleep on. I was in E-Pod cell # and again on Feb. 15, 2022 to Feb. 23, 2022. Then I was placed in E-2 in E-pod on Feb. 23, 2022 through March 2, 2022.

Upon entering BSB Detention Center, I was placed in a two man cell as a Third Person on Dec. 13, 2022 through Dec. 16, 2022 and again on Feb. 23, 2022 through March 2, 2022.

I was placed on Ag-Seg status down in wait and holding cell in booking at the BSB Detention Center on Dec. 16, 2022 through January 4, 2022. Then again again Jan. 19, 2022 through Feb. 2, 2022

C. What date and approximate time did the events giving rise to your claim(s) occur?

Law library Dec. 16, 2021 about 9: A.M. - Till now
 Third person on floor without boat Dec. 13, 2021 - Dec. 16, 2021, Feb. 15, 2022 -
 Feb. 23, 2022 - March 2, 2022.
 Third person in two man cell - Dec. 13, 2021 - Dec. 16, 2021, Feb. 15, 2022 -
Feb. 23, 2022, Feb. 23, 2022 - March 2, 2022
I was Ag-Seg Dec. 16, 2021 - Jan. 4, 2022, Jan. 19, 2022 - Jan. 31, 2022

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what?

Was anyone else involved? Who else saw what happened?) I was placed into Ag-Seg Dec. 16, 2021. I was trying to get legal books to help with my case. I had no attorney. I was given donated, outdated lawbooks that could not be used and still there are no updated book. I had no lawyer at the time. Prior to Ag-Seg. I was in a two man cell as third person on the floor. I was stepped on, kicked as people were trying to get around me. I was giving

no boat, because I never knew what one was, because of the three men in a two man cell through out the jails over crowding. Tempers ran high. The violence of fighting broke out everywhere. Especially

in E-Pod. I witnessed at 5 fights in two days, and multiple others

Through out being a third person in cell. I was tripped over, stepped on, screamed at. People swinging on me. Talked down to, intimidated.

Being placed on floor is unsanitary by being exposed to staff infections and other diseases

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive. Because of the lack of legal material being up to date, when I finally received an attorney. She was overwhelmed with cases all over Montana. She could not represent me with my best interest at heart. Thus leaving her ineffective assistance of counsel. Beside being stepped on tripped over, kicked. I suffer to this day of PTSD being strong in my emotional state. I have fear, lack of sleep, depression, stress, high blood pressure, anxieties, hyper vigilance. I have entertained the thought of suicide twice since being here, having nightmares of my kids being hacked apart, auditory hallucinations

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

Plaintiff prays for relief for mental anguish, emotional distress, nominal damages, monetary damages, compensatory damages of \$1,500.00 per day and punitive damages of \$1,500,000.00 and injunctive relief requiring the facility to follow policies and procedures. Also have a private audit here at the BSB Detention Center.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act (“PLRA”), 42 U.S.C. § 1997e(a), requires that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a **prisoner** confined in any jail, prison, or other correctional facility until such administrative remedies as are available are **exhausted.**”

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes

No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Butte Silver Bow Detention Center County Jail

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

Yes

No

Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

Yes

No

Do not know

If yes, which claim(s)?

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

Yes

No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes

No

E. If you did file a grievance:

1. Where did you file the grievance?

Butte Silver Bow Detention Center, BSB County Jail

2. What did you claim in your grievance?

- Lack of updated Law books
- Three man in cell on the floor without a 12" inch platform (boat)
- Three man in a two man cell
- placed on Ag-Seg in a cell that had no toilet or sink.

3. What was the result, if any?

They are not following Detention Standards Policies and Procedures. Also still putting three men in a two man cell. No updated law books. While people still sleep directly on the floor.

"They" meaning Butte Silver Bow Detention Center County Jail

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

They did not respond back on three grievances.

The fourth one they said for ag-seg, that this place does not adequately house Ag-Seg inmates.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

Yes

No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes

No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (*If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.*)

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court (*if federal court, name the district; if state court, name the county and State*)

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

Yes

No

If no, give the approximate date of disposition.

7. What was the result of the case? (*For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?*)

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

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- Yes
 No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. (*If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.*)

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court (*if federal court, name the district; if state court, name the county and State*)

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

- Yes
 No

If no, give the approximate date of disposition

7. What was the result of the case? (*For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?*)

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 5-22-22

Signature of Plaintiff



Printed Name of Plaintiff



Prison Identification #

Prison Address




City



State



Zip Code

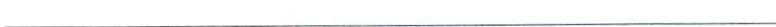
B. For Attorneys

Date of signing: _____

Signature of Attorney



Printed Name of Attorney



Bar Number



Name of Law Firm



Address



City

State

Zip Code

Telephone Number



E-mail Address

